

Approved – 9/18/03
CHARTER REVIEW COMMISSION
Tuesday, August 5, 2003 – 8:00 a.m.
6th Floor Conference Room
Council Office Building

Minutes

Commission Members Present:

Kenneth Muir, Chairman
Barbara Smith Hawk, Vice Chair
Robert Skelton
Randy Scritchfield
Julie Davis
Shelton Skolnick
Mollie Habermeier (via telephone)
Michael McKeehan
Cheryl Kagan
Sylvia Brown Olivetti

Staff:

Sonya Healy, Legislative Analyst
Carol Edwards, Legislative Services Coordinator

Justina Ferber, Legislative Analyst
Marc Hansen, Chief, Division of General Counsel,
Office of the County Attorney
William Mooney, Assistant Chief
Administrative Officer
Mike Faden, Senior Legislative Attorney

Guests:

Dale Tibbits, Montgomery County Civic
Federation

Commission Members Absent:

Javier Miyares

Commission Chairman Ken Muir called the meeting to order at 8:00 a.m.

The meeting began with a presentation by the Chief, Division of General Counsel, Office of the County Attorney, Marc Hansen on the background of the County Charter.

I. Presentation by Marc Hansen about which issues are considered Charter material

Prior to 1915, a commissioner form of government was the only type of local government in Maryland. The General Assembly exercised all legislative control over local county governments. As a result, the General Assembly became clogged with local bills, and this became a major problem at the turn of the century. The hundreds of local bills resulted in a significant amount of vote trading.

Around 1915, the General Assembly approved a proposed amendment to the Constitution of the State of Maryland. Article 11A--the Home Rule Amendment permits Maryland counties and Baltimore City to govern locally. The Constitution of Maryland directly gives the people of each county and Baltimore City the authority to form a charter and to decide how to organize local government. The Constitution also directs the General Assembly to pass what is now known as the Express Powers Act, which gives home rule counties the power to legislate in areas

that the State and Federal government has not preempted. For example, sometimes the General Assembly will pass a law and expressly provide that localities cannot legislate in that field (e.g. guns). In other cases, preemption is implied because the State has regulated a subject area so completely that local legislation is not warranted (e.g. education).

Both the County and State have concurrent authority. Under the doctrine of conflict, the County cannot permit something the State has expressly prohibited nor can the County prohibit something the State has permitted.

The Charter is really the County's constitution. The Court of Appeals has held that a Charter should deal with the organization of local government and the allocation of powers amongst the entities or agencies created in that document to exercise that power. Legislative material should not be found in the Charter. Legislative power must primarily reside in an elective Council, but this power can be shared. For example, legislative power may be shared with the County Executive, who has the power to veto legislation. In addition, the Council's legislative power can be shared with the people through the power of referendum. The County Charter provides that the people of Montgomery County can share the legislative power by petitioning laws passed by the County Council to referendum.

A proposed Charter Amendment must be approved by the registered voters of the County. A Charter Amendment is placed on the ballot in one of two ways:

1. The County Council may place a proposed Charter Amendment on the ballot. The Charter Review Commission may advise the Council about existing Charter proposals or make independent suggestions for Charter amendments.
2. Citizens may petition a Charter Amendment, as long as the petition contains the requisite signatures of not less than 20 percent of registered voters or 10,000 whichever is less.

Chairman Muir asked if Commission members had questions for Mr. Hansen.

- Mr. McKeehan asked if any other counties have a Charter Review Commission.

Council Staff Justina Ferber responded that it may not be designated in their Charters; however, some counties appoint committees to study the Charter.

Ms. Hawk responded that there is language in other County Charters that says from time-to-time a group will be formed to review/make recommendations to their Charter. Eight counties have such language.

- Mr. McKeehan asked if there are any state-wide trends with Charter amendments or if other counties grappling with similar issues.

Mr. Hansen responded that the largest trend found state-wide are proposals related to tax limitations.

Chairman Muir stated that as a point of perspective in his six years with the Commission, there have been probably five or six proposals per term, and approximately half of these proposals were initiated by the Council. Some of these proposals have been legislative in nature, such as the agricultural preserve proposal, and the Commission did not take these issues past the initial discussion phase. Previous Commissions also looked at the issue of amending the Charter verses bringing local laws to referendum. Over the years, as the population has grown, the number of signatures required to amend the Charter is less than those required for a referendum. This issue needs to be resolved by amending the State Constitution. For whatever reason, there has not been enough support in Annapolis to get this amendment passed.

Chairman Muir asked if there were any other questions.

- Mr. McKeehan asked if there is a threshold question that the Commission should be asking to determine if a particular issue is Charter material.

Marc Hansen responded that the Commission should examine the issue to see if it is dealing with the organization of government, the allocation of some fundamental power, or the imposition of a general limitation on a fundamental power. If an issue does not fall into one of these categories, it is most likely not Charter material.

At this point in the meeting, the Chairman asked guests to introduce themselves. Dale Tibbits representative of the Montgomery County Civic Federation and Mike Faden, Senior Attorney for the Council introduced themselves.

II. Discussion of issues from the May 2002 Charter Review Commission Report

Mr. Skolnick referred to page 11 of the report (Election of the County Council). He discussed the issue of creating additional single-member districts. He requested that the Commission study this issue because the large population growth in the County has resulted in districts that are too large (each district has approximately 200,000 people). Mr. Skolnick suggested having eight districts identical to the current State legislative districts. The advantage would be that people could more easily identify their district and their Council representative. He also recommended balancing the eight district representatives with three or more at-large representatives.

Mr. Skolnick also noted his concern about gerrymandering during redistricting. Recently, the Court of Appeals had to decide the State legislative districts because of gerrymandering. He recommended that the number of Councilmembers should be fixed for the next 10 years, until after the next census. The system should be reevaluated at that time.

Mr. Skolnick also recommended that the Charter be amended to expressly make Councilmember positions full-time jobs.

Ms. Olivetti stated that she served on the Charter Review Commission when the number of Councilmembers was increased to nine members. At that time there was a great deal of debate about this change.

Ms. Davis stated that she served on the Charter Review Commission from 1982 to 1986, and that there was a lot of enthusiasm from citizens for going to a district system because before 1986 there was a seven-member Council; five were from districts and two were at-large. Of the seven members, five were required to live in each of the five districts, but two were elected at-large. At the polling place a voter cast a ballot for seven Councilmembers; five lived in the five districts to give some geographic balance.

Ms. Davis noted that at one extreme, County residents did not want any change to the seven-member system. At the other extreme, a group of citizen associations and civic leaders pushed for the change through a petition drive and came close to getting all district representation. The majority of the Commission recommended no change to the seven-member system, but the minority report recommended the five/four system which the County has today. The idea was to keep the five districts and have four at-large representatives so no one could gang up, but there could still be vote trading. By the time the next Charter Review Commission was in place, there had been a very close petition drive that almost passed for all district representation.

Ms. Davis noted that the Council put the five/four system on the ballot as a compromise, rather than ending up with an all district system as proposed by civic groups and community leaders. She stated that the 1982 through 1986 Charter Review Commission reports should have the full discussion of the options.

➤ Mr. Muir called for a vote on studying the structure of the Council. Eight Commissioners voted for the study and two Commissioners (Kagan and McKeehan) voted against it. Chairman Muir also called for a vote on reviewing the issue of whether Councilmembers should be full-time representatives. The Commissioners voted unanimously to study these issues. Mr. Miyares was absent.

Mr. Muir asked if there were any other issues the Commission wanted to review.

Ms. Davis requested information on the current structures of councils in other jurisdictions.

Mr. Skolnick pointed to page 10 of the previous Charter Review Commission report under Section 109 referencing the sentence that states “. . . the Council shall not sit for more than forty-five days in each year for the purpose of enacting legislation.” He questioned why there is a limitation on the number of days and if this is a problem.

Mr. Hansen commented that this limitation is governed by State legislation. Mr. Faden noted that this is not a problem in practice because the Council only meets on Tuesdays to enact legislation.

Mr. McKeehan informed the Commission that he was a member of the Committee to Study the Compensation of the County Executive, County Council, Sheriff, and State's Attorney, which produced a report in April 2002. As part of the evaluation process, the Committee interviewed some Councilmembers, who believed that the level of work associated with the position is commiserate to that of a full-time job. He stated that the Committee looked at other comparable counties as part of their deliberations.

Ms. Hawk brought up the fact that the previous Commission recommended working with the delegation to raise the bar on the petition aspect and wanted to know what happened to that issue.

Ms. Ferber responded that this issue has been proposed in the legislature for the last five years, and it seems to gain momentum each time it's discussed.

Chairman Muir stated that Charlie Barkley is the Chairman of the Montgomery House Delegation and asked if the Commission members would like to invite him to a Commission meeting to speak on this issue.

At this point in the meeting, the Chairman asked if there were any other questions or comments.

Mr. Hansen and Mr. Faden informed the Commission that they are working on a technical proposal regarding the way days are counted for legislative purposes. For example, this would involve the number of days that the County Executive has to act on a bill and how holidays and weekends are counted. The Charter is not clear on this issue.

The Commission briefly discussed removing some of the inoperable provisions still found in the Charter like Sections 311A (the landfill issue), and 313A (the C&P Telephone Company issue).

Mr. Skelton stated that if the Commission decides to move forward on changes to the number of Council districts, that it would not be a good idea to tackle a lot of other issues given the time-frame the Commission has to make decisions. He noted that numerous issues would distract people from the main issues.

- Chairman Muir asked for a vote on whether the Commission should study the removal of these inoperable provisions. Five members voted yes; therefore, the motion was not approved.

Chairman Muir stated that one of the things the previous Commission spent a good bit of time on was the business of how accessible government is to citizens (the number of Councilmembers is a piece of that). There are two schools of thought on this issue: 1) Part of the Commission's job is to make more people aware of the Charter; and 2) when people have problems or issues they find out about the County Charter and how to attack a problem.

The Chairman listed the following topics and action items for the Commission's review:

1. Structure of the Council--number of districts, single verses at-large
2. Full-time verses part-time Council representation formalized in the Charter
3. Technical amendment on counting legislative days (proposed by Hansen/Faden)
4. How other County councils are structured
5. Invite Charlie Barkley to discuss amending the State Constitution
6. Public notification of issues up for discussion

The Chairman asked if there was any preference as to how the Commission receives input from County residents.

Ms. Olivetti commented that she feels it is important for the Commission to have a public hearing or to invite the public to come to a Charter Review Commission meeting.

Mr. Scritchfield noted that because of the compressed time period that the Commission is working under for the 2004 report, that deferring the issue of the Council structure until the next election cycle may be required.

The Chairman suggested that once the Commission has serious proposals, then it could schedule a public hearing for community input.

At this point in the meeting, the Commissioners discussed sending out a news release for the September meeting. Ms. Hawk suggested that the Commission should wait until the October meeting after meeting with the County Executive and County Council. The Commission agreed to send out a press release for the October meeting.

Chairman Muir suggested that the Commission should divide the issues into subcommittees and then come back to full Commission with specific ideas.

Ms. Davis commented that the Commission needs to look at restructuring the Council, but this needs to be done in a responsible, methodical way. If this type of in-depth review is not possible in this term, then this issue should be deferred to the next term.

The Chairman asked Council staff to let Councilmembers know that the Commission will be studying the structure of the Council and whether to make Councilmember positions full-time jobs in the Charter.

III. Presentation by the Civic Federation (by Dale Tibbits)

Mr. Tibbits gave a brief overview of the Civic Federation's proposal to change County Council representation to nine single-member district representatives and no at-large representatives. He provided the Commission a copy of the Civic Federation's proposal and background materials.

Chairman Muir asked if Commission members had any questions/comments about the Civic Federation Report.

Ms. Kagan asked what the Civic Federation meant in its proposal when it referred to a lack of diversity.

Mr. Tibbits commented that the reference was not just racial, but also deals with a lack of political and socio-economic diversity. The Civic Federation is also concerned about the development of slates and the financial coordination of those slates.

Ms. Hawk questioned the Civic Federation's statement about large special interest contributors exerting undue influence on County policies and actions. She asked how this conclusion was developed.

Mr. Tibbits stated that the Civic Federation did an analysis on political contributions, but a final analysis on changes in policies has not been completed yet.

IV. Administrative Items

The Commission unanimously approved the following items:

1. Meeting days: 3rd Thursday of every month
2. Time: 8 a.m.
3. Next meeting is scheduled for September 18.
4. A press release will be issued inviting the public to the October 16 meeting
5. The Chairman will write a letter to Mr. Charlie Barkley inviting him to a Commission meeting
6. July 2 meeting minutes

The Chairman adjourned the meeting at 9:35 a.m.